

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

PRISM TECHNOLOGIES LLC,

Plaintiff,

v.

AT&T MOBILITY LLC,

Defendant.

Civil Action No. 8:12-cv-122-LES-TDT

**Jury Trial Requested In Omaha**

---

PRISM TECHNOLOGIES LLC,

Plaintiff,

v.

SPRINT SPECTRUM L.P.,

Defendant.

Civil Action No. 8:12-cv-123-LES-TDT

**Jury Trial Requested In Omaha**

---

PRISM TECHNOLOGIES LLC,

Plaintiff,

v.

T-MOBILE USA, INC.,

Defendant.

Civil Action No. 8:12-cv-124-LES-TDT

**Jury Trial Requested In Omaha**

---

PRISM TECHNOLOGIES LLC,

Plaintiff,

v.

U.S. CELLULAR CORP.,

Defendant.

Civil Action No. 8:12-cv-125-LES-TDT

**Jury Trial Requested In Omaha**

---

PRISM TECHNOLOGIES LLC,

Plaintiff,

v.

CELLCO PARTNERSHIP D/B/A VERIZON  
WIRELESS,

Defendant.

Civil Action No. 8:12-cv-126-LES-TDT

**Jury Trial Requested In Omaha**

**DEFENDANTS' COMMON *DAUBERT* MOTION TO EXCLUDE TESTIMONY OF  
PRISM'S DAMAGES EXPERT MR. JAMES E. MALACKOWSKI**

Prism Technologies, LLC's ("Prism") damages expert, Mr. James E. Malackowski, issued an expert report with respect to each of the Defendants AT&T Mobility LLC ("AT&T"), Sprint Spectrum L.P. ("Sprint"), T-Mobile, U.S.A., Inc. ("T-Mobile"), U.S. Cellular Corporation, d/b/a U.S. Cellular ("U.S. Cellular"), and Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless") (collectively "Defendants").<sup>1</sup> Defendants respectfully request that the Court preclude Mr. Malackowski from testifying as to the opinions expressed in his expert report because those opinions are not based on reliable principles or methodologies, are not based on the facts of the case, and/or are not legally sound. The fatal flaws of Mr. Malackowski's opinions are fully described in the accompanying brief in support of this motion.

Dated: July 7, 2014

By: s/ Michael T. Hilgers (with  
permission)

Michael T. Hilgers (#24483)  
Carrie S. Dolton (#24221)  
**GOBER HILGERS PLLC**  
14301 FNB Parkway, Suite 100  
Omaha, NE 68154  
Telephone: 402.218.2106  
Facsimile: 877.437.5755  
mhilgers@goberhilgers.com  
cdolton@goberhilgers.com

Michael J. Abernathy (admitted *pro hac*  
*vice*)

By: s/ Michael K. Huffer (with  
permission)

Michael K. Huffer, Esq. (#18087)  
David A. Blagg (#17473)  
Amy M. Locher, Esq. (#24786)  
**CASSEM, TIERNEY LAW FIRM**  
8805 Indian Hills Drive  
Suite 300  
Omaha, NE 68114  
Tel: (402) 390-0300  
Fax: (402) 390-9676  
mhuffer@ctagd.com  
dblagg@ctagd.com  
amlocher@ctagd.com

---

<sup>1</sup> Pursuant to the Court's Order of June 13, 2014 permitting the filing of a common *Daubert* motion, Defendants have prepared one motion and are submitting this motion and supporting pleadings in each of the above-captioned actions.

Brian J. Arnold (admitted *pro hac vice*)  
Christopher Hanba (admitted *pro hac vice*)  
**K&L GATES LLP**  
70 West Madison Street  
Chicago, IL 60602-4207  
Telephone: 312.372.1121  
Facsimile: 312.827.8000  
mike.abernathy@klgates.com  
christopher.hanba@klgates.com

Daniel J. Thomasch (admitted *pro hac vice*)  
Josh Krevitt (admitted *pro hac vice*)  
**Gibson, Dunn & Crutcher LLP**  
200 Park Avenue  
New York, NY 10166-0193  
Tel +1 212.351.3800  
Fax +1 212.351.6200  
DThomasch@gibsondunn.com  
JKrevitt@gibsondunn.com

**ATTORNEYS FOR DEFENDANT T-MOBILE USA, INC.**

Charles B. Molster III, Esq.  
Thomas M. Dunham  
**Winston & Strawn LLP**  
1700 K Street, N.W.  
Washington, DC 20006-3817  
Tel.: (202) 282-5988  
Fax: (202) 282-5100  
cmolster@winston.com  
tdunham@winston.com

Kurt A. Mathas, Esq.  
**Winston & Strawn LLP**  
35 West Wacker Drive  
Chicago, IL 60601  
Tel: (312) 558-5600  
Fax: (312) 558-5700  
kmathas@winston.com

**ATTORNEYS FOR DEFENDANT  
CELLCO PARTNERSHIP d/b/a  
VERIZON WIRELESS**

By: s/ David R. Clonts (with permission)

Kirt S. O'Neill  
G. Andrew Rosbrook  
**AKIN GUMP STRAUSS HAUER  
& FELD**  
300 Convent Street, Suite 1500  
San Antonio, TX 78205  
Phone: (210) 281-7000  
koneill@akingump.com  
arosbrook@akingump.com  
James M. Sulentic No. 19610  
John P. Passarelli No. 16018  
**KUTAK, ROCK LAW FIRM**  
1650 Farnam Street  
Omaha, NE 68102-2186  
Phone: (402) 346-6000  
Fax: (402) 346-1148  
james.sulentic@kutakrock.com  
john.passarelli@kutakrock.com

By: s/ Michael K. Huffer

Michael K. Huffer, Esq. (#18087)  
David A. Blagg (#17473)  
Amy M. Locher, Esq. (#24786)  
**CASSEM, TIERNEY LAW FIRM**  
8805 Indian Hills Drive  
Suite 300  
Omaha, NE 68114  
Tel: (402) 390-0300  
Fax: (402) 390-9676  
mhuffer@ctagd.com  
dblagg@ctagd.com  
amlocher@ctagd.com  
  
B. Trent Webb  
John D. Garretson  
Christine A. Guastello  
**SHOOK, HARDY & BACON L.L.P.**  
2555 Grand Blvd.  
Kansas City, MO 64108

Steven M. Zager  
**AKIN GUMP STRAUSS HAUER  
& FELD**  
One Bryant Park  
New York, NY 10036-6745  
Phone: (212) 872-1000  
szager@akingump.com

Tel. 816-474-6550  
Fax. 816-421-5547  
bwebb@shb.com  
jgarretson@shb.com  
cguastello@shb.com

**ATTORNEYS FOR DEFENDANT  
SPRINT SPECTRUM LP**

David R. Clonts  
Manoj S. Gandhi  
**AKIN GUMP STRAUSS HAUER  
& FELD**  
1111 Louisiana Street, 44th Floor  
Houston, TX 77002-5200  
Phone: (713) 220-5800  
dclonts@akingump.com  
mgandhi@akingump.com

**ATTORNEYS FOR DEFENDANT  
AT&T MOBILITY LLC**

By: s/ Michael K. Huffer (with permission)

Michael K. Huffer, Esq. (#18087)  
David A. Blagg (#17473)  
Amy M. Locher, Esq. (#24786)  
**CASSEM, TIERNEY LAW FIRM**  
8805 Indian Hills Drive  
Suite 300  
Omaha, NE 68114  
Tel: (402) 390-0300  
Fax: (402) 390-9676  
mhuffer@ctagd.com  
dblagg@ctagd.com  
amlocher@ctagd.com

Richard J. O'Brien  
Douglas I. Lewis  
**SIDLEY AUSTIN LLP**  
1 S. Dearborn Street  
Chicago, Illinois 60603  
Telephone: (312) 853-7000

Facsimile: (312) 853-7036  
robrien@sidley.com  
dilewis@sidley.com  
jzirkle@sidley.com

**ATTORNEYS FOR DEFENDANT  
UNITED STATES CELLULAR  
CORPORATION**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 7, 2014 true and correct copies of the foregoing were served via the Court's CM/ECF system as follows:

**Kramer Levin Naftalis & Frankel LLP**

Jonathan S. Caplan, Esq.  
Mark A. Baghdassarian, Esq.  
Marcus A. Colucci, Esq.  
1177 Avenue of the Americas  
New York, NY 10001  
Tel: 212.715.9100  
Fax: 212.715.8000  
jcaplan@kramerlevin.com  
mbaghdassarian@kramerlevin.com  
mcolucci@kramerlevin.com

Paul Andre, Esq.  
Lisa Kobialka, Esq.  
990 Marsh Road  
Menlo Park, CA 94025  
Tel: 650.752.1700  
Fax: 650.752.1810  
pandre@kramerlevin.com  
lkobialka@kramerlevin.com

*Attorneys for Plaintiff  
Prism Technologies LLC*

**Koley Jessen P.C., L.L.O.**

Michael C. Cox, Esq. (17588)  
Daniel J. Fischer, Esq. (22272)  
1125 S. 103rd Street, Suite 800  
Omaha, NE 68124  
Tel: 402.390.9500  
Fax: 402.390.9005  
Mike.cox@koleyjessen.com  
Dan.fischer@koleyjessen.com

**Prism Technologies LLC**

André J. Bahou, Esq.  
Vice President & Chief IP Officer  
878 Arlington Heights Drive, Suite 400  
Brentwood, TN 37027  
Tel: 615.712.6580  
Fax: 402.578.1447  
Aj.bahou@prsmip.com

s/ Michael K. Huffer

---